FILE COPY

No 974

SUPREME COURT OF THE UNITED STATES

October Term 1943

JOE JOHNSON ROBERTS

vs.

MARGARET ELIZABETH ROBERTS and UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

JOE JOHNSON ROBERTS

By Jas. G. Martin,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

JOE JOHNSON ROBERTS

vs.

MARGARET ELIZABETH ROBERTS and
UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable Supreme Court of the United States:

Petitioner, Joe Johnson Roberts, shows to the Court as follows, to-wit:

THE MATTER INVOLVED IS: whether Joe Johnson Roberts, father of Joe William Roberts, deceased, or Margaret Elizabeth Roberts, widow of deceased, is entitled to the proceeds of a $10,000 government war risk insurance policy on the life of the deceased, who was killed in line of duty in the U. S. Air Force on the 10th day of January, 1944.

The judgment of the Circuit Court of Appeals for the Fourth Circuit reversing the District Court was entered on November 12, 1946 (Record 112), the opinion of the Circuit Court of Appeals being shown at page 106 of the Record.

Basis Upon Which This Court Has Jurisdiction to Review

The Circuit Court of Appeals has decided an important question of federal law, which has not been, but should be, settled by the Supreme Court; concerning insurance policies of nationwide importance, and its decision has reversed the District Court, which heard the case with a jury waived, with most of the witnesses in person before the District Court.

Also, we maintain that the decision rendered by the Circuit Court of Appeals in the present case is in conflict with that rendered by the Circuit Court of Appeals for the Tenth Circuit in the case of *Bradley* v. *U. S.*, 143 F. (2d) 573, which was decided under evidence almost identical with the evidence in the present case, although the opinion in the present case seeks to differentiate the two cases.

That there are special important reasons for the highest Federal Court to decide the question at bar, and that there is full jurisdiction pursuant to Rule 38, Section 5, and pursuant to the Act of February 13, 1925 as amended.

The Question Presented

The question is whether the beneficiary was changed from the father of the insured to his wife; the father being the named beneficiary, the Veterans Administration recognizing him as such and having no record of any change of beneficiary, but his wife claiming that she should be recognized as beneficiary because she claimed he had attempted to have the beneficiary changed to her.

The wife relies upon her own testimony and the depositions of William W. Perry, Jr., and Katherine Clark Perry to prove that the deceased attempted to change the beneficiary (Record pp. 1, 26, 30). The father relies upon the papers of record with the Veterans Administration showing he is the beneficiary and also the testimony of the mother and uncle of the deceased to show that the beneficiary was not changed. Record 75 (1), 92, (18)).

The Reasons Relied on for the Allowance of the Writ

The reasons for granting the writ and reviewing the case are that an important question of federal law is involved which has not been decided and should be decided by the highest Federal Court; and that it has been incorrectly decided by the Circuit Court of Appeals for the Fourth Circuit, and that to allow the decision to stand will not only work an injustice in the present case, but will cause great confusion on the many similar insurance policies all over the nation and will

permit claims of change of beneficiary to be asserted on all sorts of oral testimony, much of which cannot be combatted by the beneficiary of record.

Petitioner prays that a proper writ of *certiorari* be issued directed to the said United States Circuit Court of Appeals for the Fourth Circuit, that this cause may be reviewed and reversed, and such other relief granted as may be proper.

JOE JOHNSON ROBERTS

By Jas. G. Martin,
Counsel for Petitioner,
(500 Western Union Bldg., Norfolk, Va.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

JOE JOHNOSN ROBERTS

vs.

MARGARET ELIZABETH ROBERTS and
UNITED STATES OF AMERICA

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Jurisdiction:

Jurisdiction is pursuant to section 240 of the Judicial Code as amended, 28 U.S.C., section 347.

The Error Assigned

The Circuit Court of Appeals erred in reversing the District Court and deciding that the beneficiary in the insurance policy had been changed from the father to the wife of the insured.

Statement of the Case

Joe William Roberts, deceased, for brevity hereinafter often called Roberts, Jr., was brought up and

chiefly educated by his parents, who were people of very small means, near Soddy, Tennessee. He entered the Navy and went into the air force. He took out a $10,000 National Service Life insurance policy in favor of his father, Joseph Johnson Roberts, as sole beneficiary. His father and mother lived together and he knew that his father would care for his mother. This policy was taken out the 14th day of May, 1942, and mailed to his father, and remained in possession of his father with the knowledge and approval of Roberts, Jr., till after Roberts, Jr. died on January 10, 1944. Thereafter it was duly turned over to the Veterans Administration, and monthly instalments paid to the father until stopped pending this suit.

Roberts, Jr. married Margaret Elizabeth Roberts, on December 19, 1942, she being a young woman in good health, able and accustomed to earn a living for herself. We understand she remarried some months ago.

He never changed the beneficiary from his father, left the policy always with his father, and shortly before his death, told his uncle and mother, in effect, that the policy was still in force in favor of his father.

The findings of fact by the District Court are very clear and well supported by evidence; and after finding the policy was taken out and in force with the father as beneficiary, find:

> "Subsequently the insured married the plaintiff, Margaret Elizabeth Roberts, but did not cause a change in the beneficiary nor did he perform such act or acts as were required to effect such change of beneficiary." (Record 67).

The wife claims that in December, 1942, Roberts, Jr. signed a form to change beneficiary to her in Jacksonville, Florida, and left it with some unknown official to be sent to the proper place. But it never got to the proper place, although other papers then signed by him did. And long thereafter he continued to leave the policy with his father, and told his mother and uncle that it was still in force in favor of his father. And in 1943, Roberts, Jr. and his wife visited in the very house where his parents lived and the policy was, and never asked for its return, or that it be turned over to his wife; and though Roberts, Jr. wrote many letters to his wife, no letter mentions this insurance.

Argument

All the evidence in the case was heard orally in the presence of the District Court except the depositions of Mr. and Mrs. Perry and the findings of fact of the District Court were entitled to extremely great weight. The opinion of the District Court is shown at page 63 of the printed record. We submit that for a Circuit Court of Appeals to reverse the findings of fact under such evidence is erroneous and would throw into great confusion the questions of who are beneficiaries on these war risk insurance policies.

It is to be noted that neither in this case nor in *Bradley* v. *U. S.*, 142 Fed. (2d) 573, did the court hold that the confidential report signed by an insured changed the beneficiary. As to such confidential report, the majority opinion in *Bradley* v. *U. S.* said:

"* * * The Administration was a total stranger to the report, and did not receive it or have knowledge of its execution until after the death of the insured, and it was forwardetd to the Administration upon its request. It is not a notice of any kind, is not a direction that the name of the beneficiary be changed, and does not express or indicate even indirectly or inaptly a desire to have the beneficiary changed. Indeed, it is not a voluntary expression of any wish, desire or intention. At most it indicates a belief or understanding that his wife was the then present beneficiary. When given its most liberal construction in the light of all the facts and circumstances, we are convinced that it cannot be treated as an effectuation of the insured's intention to change his beneficiary."

We respectfully submit that this case should be reviewed, and the decision of the Circuit Court of Appeals reversed.

By Jas. G. Martin,
Counsel for Petitioner,
(500 Western Union Bldg., Norfolk, Va.)

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Supreme Court of the United States

OCTOBER TERM 1946

JOE JOHNSON ROBERTS

v.

MARGARET ELIZABETH ROBERTS

AND UNITED STATES OF AMERICA

BRIEF OPPOSING THE GRANTING OF WRIT OF CERTIORARI

STATEMENT OF THE CASE

Joe William Roberts was the son of Joe Johnson Roberts. He entered the Armed Service of the United States. On the 14th day of May, 1942, a National Life Insurance policy in the sum of $10,000 was issued to him. His father was named beneficiary. On the 19th

day of December, 1942, at Jacksonville, Florida, he married his childhood sweetheart, Margaret Elizabeth Davison, and between the 19th and 24th of December, 1942, the beneficiary of said policy was changed from Joe Johnson Roberts to Margaret Elizabeth Roberts. On January 10th, 1944, the insured died in line of duty. Claim was made for the insurance benefits, which was denied. William W. Perry, Jr., a former Navy lieutenant, in his deposition stated that he was married on the same day and at the same place that Joe William Roberts was married, and that Perry also had National Life Insurance; that shortly after the marriage, sometime between the 19th and 22nd of December, 1942, he went to Jacksonville, Florida, with Joe Johnson Roberts, Margaret Elizabeth Roberts and his own wife, the reason for their making the trip being to change the beneficiaries of their insurance and to change the beneficiaries on their gratuity bonus and other forms that needed to be filled out on account of their marriage. (R. 3). He further testified that his wife and Mrs. Roberts accompanied them on the trip to Jacksonville; that they left the two ladies in Jacksonville while they went out to the air station; that they went to the offices of the Officers' Records and went up to the counter and told the lady at the counter that they wanted to make out a change on their insurance and on the bonus and gratuity pay. (R. 4). He testified further that he saw the name Margaret Roberts written into the form changing the beneficiary on the life insurance. (R. 5) The person in charge said they would put the papers in the proper channels. (R. 20) This particular form never reached the Veterans Bureau, or if it did was misplaced.

The Government, in cross-examination of Lt. Perry, introduced certain documents which clearly proved that Roberts and Perry were at the place stated between the 19th and 24th of December, 1942. (R. 6-7) Confidential statements in the handwriting of Joe William Roberts were introduced, one dated December 15th, 1943 and the other September 24th, 1943, both written after his marriage, in which the decedent stated that his wife Margaret was the beneficiary. In addition thereto, there was introduced an officer's personnel record in the handwriting of the decedent, in which he stated his wife was the beneficiary of his policy of insurance. (R. 62-63).

A jury was waived at the trial and the District Court found for the defendants. On an appeal to the Circuit Court of Appeals for the Fourth Circuit, the case was reversed and remanded. (For a more complete statement, see the opinion of Judge Soper. R. 106).

QUESTION INVOLVED

The sole question involved is whether or not the beneficiary of the policy had been changed to that of Margaret Elizabeth Roberts, the widow of the decedent.

BRADLEY v. U. S.

Much has been said about the case of Bradley v. United States et al, C.C.A. Tenth Circuit, which was decided May 30th, 1944, a re-hearing was denied on July 5th, 1944, and a petition for writ of certiorari was denied. The case is reported in 142 F. 2d, 573. Briefly,

the Bradley case holds that a confidential personnel report addressed to United States Air Port wherein officer indicated that wife was beneficiary of insurance, could not be treated as an effectuation of his intention to change the beneficiary so as to permit recovery of insurance by wife. That was the sole issue in the Bradley case. Mr. Justice Murrah, who wrote the opinion, ably reviews the law applicable to the change of beneficiaries in life insurance policies, but to repeat, the sole issue in that case was as above stated, which is etntirely different from the facts of this case. In reviewing the law, it is said in the Bradley case that an intent to change the beneficiary in a life insurance policy if standing alone is not sufficient; that in addition thereto the insured must do all that he could be reasonably expected to do to effectuate the change. Many authorities are cited in support thereof. In the case before this court, clearly the insured intended to change the beneficiary and did all that he could be reasonably expected to do to effectuate the change. Therefore, there is no conflict between this case, decided by the Fourth District, and that of the Bradley case, decided by the Tenth Circuit, and counsel for the petitioner herein has erroneously stated the facts on page 2 of the petition for a writ of certiorari. Moreover, Judge Soper in writing the opinion for the court (R. 111) used this language: "We are in accord with the views expressed in Bradley v. United States." How then is it possible for there to be a conflict in these circuits?

OPINION OF DISTRICT COURT

The opinion of the District Court (R. 63) is erroneous, and the court's attention is respectfully called to said opinion. (R. 65) The eighth line of the second paragraph the court says: "At that time he said to his mother that he had this large insurance policy which would take care of them." This was not the testimony of the mother It was so argued by counsel for petitioner herein and the court was confused between what the mother actually testified and what counsel stated the testimony to be. Counsel for the petitioner admitted in his argument in the Circuit Court of Appeals that this was not an accurate statement of the facts, and Judge Soper, in delivering the opinion of the Circuit Court of Appeals, comments on this. At the bottom of page 109 of the Record and top of page 110: "The stenographic report of the mother's evidence does not contain this statement."

The District Court show further confusion when in its opinion (R. 66) the District Judge says: "* * * as to the execution of these personnel statements, which I do not undertake to explain nor to understand * * *". If the District Judge did not understand this important portion of the evidence, which clearly proved an intent to change and was corroboration of Lt. Perry, then, of course, the findings of the District Court should not be afforded the same degree of presumption of correctness usually given in such cases.

VITAL PROOF OF CASE IN FORM OF DEPOSITIONS AND EXHIBITS

It is respectfully submitted that the necessary elements of Mrs. Roberts' case was made out through depositions of Lt. Perry and the depositions of Lt. Perry's wife, and the confidential statements introduced as Exhibits 5, 6 and 7, and where this is true, the verdict of the lower court does not carry the same weight as where a witness appeared and testified before the court. See Nashua Mfg. Co. v. Berenzweig, 39 F. 2d, 896.

ARGUMENT

It is respectfully submitted that the writ of certiorari should be denied. Reasons are assigned as follows:

(a) No special or important reasons exist as set forth in Rule 38, Sec. 5, Sub. Sec. (b) of this court.

(b) There is no conflict between the decision rendered by the Fourth Circuit Court of Appeals and the Tenth Circuit Court of Appeals.

(c) The District Court's verdict is plainly wrong.

(d) The able opinion of Judge Soper, of the Circuit Court of Appeals for the Fourth Circuit, is plainly just and clearly and fairly decides the issues between the litigants.

(e) The law applicable to a decision of this case is well settled.

(f) There are no novel questions involved nor is it a case of first impression.

(g) Litigation involving Government insurance policies is not a new subject. Thousands of actions were brought since World War I, and the law as to changing of beneficiary has become well established. Based on the law as it is, information was given out to the different commanding officers, who in turn passed this on to the men of their command, and to now change the law would lead to confusion and inevitably lead to persons becoming beneficiaries under National Life Insurance policies who were never intended by the insured to be beneficiaries.

We respectfully submit that the petition for writ of certiorari should be denied and the decision of the Circuit Court of Appeals for the Fourth Circuit be allowed to stand as rendered.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 974

JOE JOHNSON ROBERTS, PETITIONER

v.

MARGARET ELIZABETH ROBERTS AND THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

This case involves a dispute between petitioner, Joe Johnson Roberts, the father of a deceased aviation officer of the United States Navy, and respondent, Margaret Elizabeth Roberts, his widow, as to the distribution of the proceeds admittedly payable by the United States under a $10,000 policy of life insurance issued to the officer under the National Service Life Insurance Act of 1940.

The question involved in the case as presented by the petition for certiorari appears to be factual, namely, as to whether the father or widow

of the deceased was the properly designated beneficiary. In view of the nature of the question presented and the Government's lack of pecuniary interest in its determination, we neither urge nor oppose the granting of certiorari in this case.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

FEBRUARY 1947.

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